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"'That this Constitution and the laws of the United States, and the laws * * * made in pursuance thereof, * * * shall be the supreme law of the land.'

"Section 2, art. 18, and section 2, art. 6, must have harmonious relation, since no express declaration in the amendment was made, nor are the provisions necessarily inconsistent. The national legislation, therefore, is paramount, and the state laws, when in conflict, must yield, *Ballaine v. Alaska N. Ry. Co.*, 259 Fed. 183, 170 C. C. A. 251, and cases cited. Much 'bewilderment' is created by 'concurrent power to enforce by proper legislation,' granted by section 2, art. 18. This is a conferred power, not upon courts of the state, giving them concurrent jurisdiction to enforce a congressional act, but primarily a power conferred upon the state Legislature, and through it upon the state courts, by such legislation as it may enact in harmony with the National Prohibition Act, to enforce article 18, and while the amendment 'of its own force repeals' all inconsistent laws, it preserves inviolate laws of the state consistent with its provisions.

"The state, then, may by appropriate legislation exert its power to enforce article 18, either by new legislation or appropriate existing legislation. Neither article 18 nor the Congress sought to destroy any existing remedies by a state to curb the drink evil, and where existing remedies are provided by a state, available for the enforcement of article 18, and in harmony with the Prohibition Act, *supra*, the power of the state, through its courts, may be invoked, and a conviction in a state court for conduct which is in violation of the Prohibition Act, *supra*, is a bar to a prosecution in the federal courts. It seems manifest that it was not the intent that a person should be punished by the state and federal law for the same offense. The concurrent power given to the state does not, however, authorize the state to delegate that power to municipalities. It is a power which must be exercised by the state itself. *Everett School District v. Pearson et al* (D. C.) 261 Fed. 631. The state may confer power on municipal courts and officers to enforce under state authority article 18, but it has not done so. A conviction for violation of a municipal ordinance, pursuant to grant of power given by the state is not a bar to a prosecution in the federal court for violation of the provisions or the National Prohibition Act."

Insurance—Death Intentionally Caused as Accidental.—In *Employers' Indemnity Corporation v. Grant*, 271 Fed. 136, the United States Circuit Court of Appeals for the Sixth Circuit held that where a railway conductor armed himself to scare a passenger out of a toilet, from which he had refused to come on the conductor's orders, and was shot and killed by the passenger before he had time even to threaten with his gun, his death was accidental, within an accident

insurance policy, if he had no reason to anticipate that the passenger was armed, or that his action would tend to provoke a fatal encounter.

The court said in part: "Policies of accident insurance, indemnifying against death from external, violent, and accidental means, either with or without restrictive or defining language as to what is or is not accidental means, have often been considered by the courts. The law is well settled as to what is or is not accidental means within the meaning of a policy thus phrased; indeed, we discover no inconsistency or conflict in the cases, either in the statement of the law or in the application of the law to the facts of the different cases. And because of this settled state of the law, and the absence of any conflict in the cases, we do not deem it necessary to review the cases or to restate the general principles as to what is or is not accidental within the language of an accident insurance policy. It will be sufficient to refer to a few of the leading cases. See *U. S. Mutual Accident Ass'n v. Barry*, 131 U. S. 100, 9 Sup. Ct. 755, 33 L. Ed. 60; *Western Commercial Travelers' Ass'n v. Smith* (8 C. C. A.) 85 Fed. 401, 29 C. C. A. 223, 40 L. R. A. 653; *Hutchcraft's Ex'r v. Insurance Co.*, 87 Ky. 300, 8 S. W. 570, 12 Am. St. Rep. 484.

"In some cases, however, the insured met his death, as the result of an intentional and designed killing of some third person, and if such killing was not the direct result of misconduct of the deceased, or was unforeseen and not reasonably to be anticipated by him, then his death is held to be the result of external, violent, and accidental means. For cases so holding, see the following: *Robinson v. U. S. Mut. Accident Ass'n* (C. C.) 68 Fed. 825, affirmed on another ground 74 Fed. 10, 20 C. C. A. 262; *Railway Mail Ass'n v. Moseley* (6 C. C. A.) 211 Fed. 1, 127 C. C. A. 427; *Utter v. Travelers' Ins. Co.*, 65 Mich. 545, 32 N. W. 812, 8 Am. St. Rep. 913; *Furbush v. Maryland Casualty Co.*, 131 Mich. 234, 91 N. W. 135, 100 Am. St. Rep. 605; on second appeal 133 Mich. 483, 95 N. W. 55; *Hutchcraft's Ex'r v. Insurance Co.*, 87 Ky. 300, 8 S. W. 570, 12 Am. St. Rep. 484; *Richards v. Travelers' Ins. Co.*, 89 Cal. 170, 26 Pac. 762, 23 Am. St. Rep. 455; *Insurance Co. v. Bennett*, 90 Tenn. 256, 16 S. W. 723, 25 Am. St. Rep. 685; *Ripley v. Railway Passengers' Assurance Co.*, 2 Bigelow, Ins. Rep. 738, Fed. Cas. No. 11,854; *Lovelace v. Travelers' Protective Ass'n*, 126 Mo. 104, 28 S. W. 877, 30 L. R. A. 209, 47 Am. St. Rep. 638. Of these cases, the one last cited may be taken as typical. Lovelace, the insured, attempted to eject a man, who was drunken and boisterous, from the office of a hotel. In doing so, and in overcoming resistance, he used no other means than his hands, and while engaged in the effort the other drew a pistol and shot him, causing death. A recovery on the ground that the death was accidental was sustained, because Lovelace neither used nor attempted to use other than natural, physical means to eject by force, and while

so doing did not know, nor have reason to believe, that the other person was armed.

"There is another group of cases, on which the plaintiff in error mainly relies, in which the assured was killed by a third person, where recovery is not allowed; but in all these cases the deceased engaged in an encounter under such circumstances that he invited his adversary to mortal combat, and either foresaw or should have foreseen that death or injury might result. See *Taliaferro v. Travelers' Protective Ass'n* (8 C. C. A.) 80 Fed. 368, 25 C. C. A. 494; *Hutton v. State's Accident Ins. Co.*, 267 Ill. 267, 108 N. E. 296, L. R. A. 1915E, 127, Ann. Cas. 1916C, 577; *Meister v. General Accident, Fire & Life Ins. Co.*, 92 Or. 96, 179 Pac. 913, 4 A. L. R. 718. Of these cases *Taliaferro v. Travelers' Protective Ass'n* may be taken as typical. The deceased had drawn a revolver and had struck his adversary in the face before the latter drew his revolver and fired, and it was held that the insured's death was not accidental, because he foresaw or should have foreseen that death or injury might probably result from his own conduct. Other cases in which death was due, not to intentional killing, but to other causes alleged to be accidental, are cited and relied on, particularly *Fidelity & Casualty Co. v. Stacey's Executors* (4 C. C. A.) 143 Fed. 271, 74 C. C. A. 409, 5 L. R. A. (N. S.) 657, 6 Ann. Cas. 955, and *Maryland Casualty Co. v. Spitz* (3 C. C. A.) 246 Fed. 817, 159 C. C. A. 119, L. R. A. 1918C, 1191. No criticism can be made of the law stated therein or the judgments rendered; but they are not in point, and are sufficiently distinguished by reference to *U. S. Mutual Accident Ass'n v. Barry*, 131 U. S. 100, 9 Sup. Ct. 755, 33 L. Ed. 60."

Robbery—Intoxicating Liquor as Subject Matter of Robbery.—In *Arner v. State*, 197 Pac. 710, the Criminal Court of Appeals of Oklahoma, held that, intoxicating liquor, possessing the inherent character of personal property, may be the subject-matter of robbery, irrespective of the purpose for which it is kept or used.

The court said: "An entire consideration of the prohibitory liquor laws of this state discloses that the intent of the Legislature was to provide that intoxicating liquors possessed by a person for the purpose of violating any of the provisions of the prohibitory liquor laws should be contraband property as between the state, its officers, and such person; that a person unlawfully possessed of intoxicating liquors, etc., could not claim to have property rights in such articles in a proceeding brought by the state to confiscate them; not that the articles and things condemned, when unlawfully kept or used, were not property. In the case of *Tom Thomas v. State*, 13 Okl. Cr. 414, 164 Pac. 995, which was a conviction for the crime of murder committed by defendant while engaged in the perpetration of a whisky robbery, the contention was made that defendant was not guilty of